

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
ERIE COUNTY

State of Ohio

Court of Appeals No. E-08-064

Appellee

Trial Court No. 08CRB01097

v.

Damon L. Newell

DECISION AND JUDGMENT

Appellant

Decided: April 17, 2009

* * * * *

Beverly Newell Hancock, for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} Defendant-appellant, Damon Newell, appeals the August 4, 2008 judgment¹ of the Sandusky Municipal Court finding him guilty of disorderly conduct, in violation of R.C. 2917.11, and fining him \$5 and assessing \$70 in court costs.

{¶ 2} On March 26, 2008, appellant was issued a complaint and summons for a violation of R.C. 2917.11, the disorderly conduct statute. On August 4, 2008, following a

¹Following remand from this court, the judgment was entered on the record on September 2, 2008.

hearing, the trial court found appellant guilty of disorderly conduct. This appeal followed.

{¶ 3} Appellant raises the following assignment of error for our review:

{¶ 4} "Assignment of Error No.1

{¶ 5} "An offense that does not allege a numerical designation of the specific statutory subsection or allege sufficient facts to inform an individual of ordinary intelligence as to the scope of the conduct prohibited is void and the court lacks jurisdiction to proceed on that offense."

{¶ 6} In his sole assignment of error, appellant contends that he was not properly charged with an offense where the complaint failed to describe the prohibited conduct or list the specific statutory violation.² In general, Crim.R. 3 provides:

{¶ 7} "The complaint is a written statement of the essential facts constituting the offense charged. It shall also state the numerical designation of the applicable statute or ordinance. It shall be made upon oath before any person authorized by law to administer oaths."

{¶ 8} Similarly, R.C. 2935.26, provides that a citation for a minor misdemeanor shall include, inter alia, "[a] description of the offense and the numerical designation of the applicable statute or ordinance."

{¶ 9} In the instant case, the officer issued a summons and complaint charging appellant with a violation of R.C. 2917.11. The complaint on the "describe offense" line

²The state did not file a brief in this appeal.

stated: "disorderly conduct (MM)," and alleged that appellant violated "section no. 2917.11."

{¶ 10} As set forth above, appellant was charged with disorderly conduct under R.C. 2917.11, which provides, in relevant part:

{¶ 11} "(A) No person shall recklessly cause inconvenience, annoyance, or alarm to another by doing any of the following:

{¶ 12} "(1) Engaging in fighting, in threatening harm to persons or property, or in violent or turbulent behavior;

{¶ 13} "(2) Making unreasonable noise or an offensively coarse utterance, gesture, or display or communicating unwarranted and grossly abusive language to any person;

{¶ 14} "(3) Insulting, taunting, or challenging another, under circumstances in which that conduct is likely to provoke a violent response;

{¶ 15} "(4) Hindering or preventing the movement of persons on a public street, road, highway, or right-of-way, or to, from, within, or upon public or private property, so as to interfere with the rights of others, and by any act that serves no lawful and reasonable purpose of the offender;

{¶ 16} "(5) Creating a condition that is physically offensive to persons or that presents a risk of physical harm to persons or property, by any act that serves no lawful and reasonable purpose of the offender.

{¶ 17} "(B) No person, while voluntarily intoxicated, shall do either of the following:

{¶ 18} "(1) In a public place or in the presence of two or more persons, engage in conduct likely to be offensive or to cause inconvenience, annoyance, or alarm to persons of ordinary sensibilities, which conduct the offender, if the offender were not intoxicated, should know is likely to have that effect on others;

{¶ 19} "(2) Engage in conduct or create a condition that presents a risk of physical harm to the offender or another, or to the property of another.

{¶ 20} "(C) Violation of any statute or ordinance of which an element is operating a motor vehicle, locomotive, watercraft, aircraft, or other vehicle while under the influence of alcohol or any drug of abuse, is not a violation of division (B) of this section.

{¶ 21} "(D) If a person appears to an ordinary observer to be intoxicated, it is probable cause to believe that person is voluntarily intoxicated for purposes of division (B) of this section.

{¶ 22} "(E)(1) Whoever violates this section is guilty of disorderly conduct."

{¶ 23} The disorderly conduct statute "prohibits a broad range of petty but obnoxious conduct" and joins "many special statutes separately forbidding various unrelated minor offenses, and public intoxication." See 1974 Committee Comment to Am.Sub.H.B. 511. Because the statute prohibits varying types of conduct, it follows that in order to be informed of the nature of the allegation the complaint must set forth the specific conduct alleged to have been violated. See *Struthers v. Ardale*, 7th Dist. No. 99-CA-145, 2000-Ohio-2610 (in a minor misdemeanor case, the complaint was insufficient where it referred only to the title and number of a municipal ordinance.) See, also,

Newburgh Heights v. Hood, 8th Dist. No. 84001, 2004-Ohio-4236; *State v. Atwood* (1990), 61 Ohio App.3d 650, 654.

{¶ 24} As Ohio courts have noted, a complaint is the basic charging instrument in all criminal proceedings in this state. *State v. Wood* (1976), 48 Ohio App.2d 339, 343. A valid complaint must be filed in order to vest a court with subject matter jurisdiction. *Newburgh Heights*, at ¶ 5. Further, a defendant who "pleads not guilty to an offense listed in the charging instrument, which is defective, has not waived his constitutional right to be advised of the nature and cause of the accusation against him." *Hamilton v. Kuehne* (May 10, 1999), 12th Dist. No. CA98-05-111, citing *Midling v. Perrini* (1968), 14 Ohio St.2d 106.

{¶ 25} Accordingly, because the complaint charging appellant with disorderly conduct failed to provide him with reasonable notice of the offense, it was insufficient and, therefore, a nullity. Appellant's assignment of error is well-taken.

{¶ 26} On consideration whereof, we find that appellant was prejudiced from having a fair proceeding and the judgment of the Sandusky Municipal Court is reversed and the matter is remanded for further proceedings consistent with this decision. Appellee is ordered to pay the costs of this appeal pursuant to App.R. 24. Judgment for the clerk's expense incurred in preparation of the record, fees allowed by law, and the fee for filing the appeal is awarded to Erie County.

JUDGMENT REVERSED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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